

Acts change procedures for businesses

The Secretary of State's office submitted several suggested legislative remedies during the 86th General Assembly. More detailed explanations of these laws will follow in later issues of *Arkansas, Inc.*, as procedural changes are implemented.

Act 646 of 2007 — HB2500 Reynolds (Faris) — Eliminates Fees for Updating Registered Agent Information — Effective Date: July 1, 2007

This Act was part of the SOS-BCS legislative package to encourage entities to update and maintain their information on SOS-BCS records. Specifically the Act eliminates the filing fees for entities to update registered agent and office information. The Act also makes some minor technical changes to clarify existing BCS laws and procedures.

Act 569 of 2007 — HB 2702 Saunders (Smith) — Requires Nonprofit Corporations

to File an Annual Report — Effective Date: 90 days after adjournment

This Act was also part of the SOS-BCS package to update SOS-BCS records. This Act will require all non-profit corporations to file an annual report with the SOS. This report must include 1) name of the corporation, 2) corporation's jurisdiction, 3) name and address of the corporation's registered agent, 4) address of the corporation's principal office, 5) names of the corporation's principal officers, and 6) names and addresses of the corporation's directors.

The annual report will be due by August 1 of each year. The first annual report, for the 2007 reporting year, will be due August 1, 2008. The SOS office plans an extensive campaign to notify non-profit corporations of this new legislative requirement.

(See **LEGISLATION** on page 2)



Secretary of State Charlie Daniels

We are certain the business community of Arkansas will benefit greatly from the legislative changes enacted during the 87th General Assembly.

Under the new law beginning in 2008, **non-profit organizations** will be required to file an annual report by August 1 of each year. There will be no cost associated with this new filing. New legislation also permits **changes of agent/ officer** to be filed without cost. This feature will also be available online by year end.

Other anticipated **new online services** available by year end include: certified copies, notary address update, franchise tax address update and global change of registered agent.

This list of changes was derived from feedback from the general public on what features would help them the most in conducting business. It is always our foremost goal to serve the business community well and implement ways to improve the services offered. We invite your feedback and value your opinions.

Profile of a Service: Imaging for Paperless Records

Moving with the technical world, the Business and Commercial Services division is in a long-term project to offer a paperless office environment and searchable electronic records.

That's the responsibility of the BCS Imaging team, a three-person crew that daily scans into a database all records and documents filed by Arkansas businesses.

The time required for entering a file to the database varies. Scanning a fictitious name takes just a few minutes. Documents generated prior to computerization of records have to be built "from the ground up," establishing an electronic trail, and this involves more time. If those documents involve a business merger, even more time is required to build two files to accurately reflect the corporate history.

Although the Imaging team can scan hundreds of documents each day, entering the thousands of BCS records will take many years, as the team works back through Arkansas's business history, adding to the quarter-million records already scanned since March 2000.

Facilitating the process in the future, each clerk working in BCS now scans new documents as they are generated, ranging from a new business incorporating, to a new notary public's commission, to the payment of franchise taxes.

BCS plans to have information available for customers to search their own records online by fall 2007. Records for the UCC division are already online, with hundreds of searches conducted by customers weekly.

Business and Commercial Services**FAQ** *Frequently Asked Questions***Q. Can I search for an entity online?**

A. Yes. This search can be performed with either the file number or corporation name.

Q. How do I cancel a fictitious name?

A. Our office requires the request on company letterhead, signed by a corporate officer.

Q. I completed my final report online. Does this mean my company is dissolved?

A. No. In addition to all taxes being current, the final report and articles of dissolution must be filed.

Q. Can I file the dissolution online?

A. No. This form must be downloaded and sent to this office, along with payment.

Q. How do I obtain a certificate of good standing for my company?

A. Certificates of good standing can be purchased online or requested via mail. Cost is \$25.

Q. How do I download a copy of my articles of incorporation?

A. Copies cannot be downloaded from our website. They must be requested from our records department. Please contact our office at 501-682-3409.

Q. What type of company should I file?

A. Our office is restricted from giving any type of legal advice. Contacting legal counsel before determining the type of company is always a good idea. The Small Business Administration is also available for advice. A company type filed in error could result in additional charges for the filer.

Q. If my franchise taxes are late, can I still pay online?

A. Yes. The online system will allow online filing of late taxes. Applicable penalties will be noted.

Q. Do I need to renew my company's license each year?

A. The only filing requirement for our office is the corporate annual report, due by May 1 of each year.

Have a question? E-mail us: corporations@sos.arkansas.gov

**Need a speaker
for your next meeting?**
Contact
Secretary of State
Business and Commercial
Services
(501) 682-3409

LEGISLATION, continued from page 1**Act 638 of 2007 — HB 2392 — D. Johnson — Model Registered Agents Act (MoRAA) — Effective Date: September 1, 2007**

Although not a formal part of the SOS-BCS package, the Secretary of State did support the passage of this model act. The MoRAA is a model act drafted by the National Conference of Commissioners on Uniform State Laws. The MoRAA accomplishes several things: 1) defines the difference between commercial registered agents and non-commercial registered agents, 2) standardizes and clarifies service of process procedures for all entities, and 3) details the duties of registered agents.

Act 15 of 2007 — HB 1009 Thyer, D. Johnson — Uniform Limited Partnership Act — Effective Date: 90 days after adjournment

The National Conference of Commissioners on Uniform State Laws also developed this act. It updates many aspects of limited partnership law and is very technical in nature. Among other things this act: 1) "de-links" the limited partnership law from existing general partnership law, 2) defines duties and relationships among limited partners and general partners, 3) requires limited partnerships to file an annual report with the secretary of state, and 4) allows for mergers and conversions to other business entities. Most of the provisions of this act will take effect September 1, 2007.

Act 865 of 2007 — SB882 — Faris (J. Wood) — LLC Member Confidentiality — Effective Date: April 3, 2007

This Act adds the names of members of Limited Liability Companies to the "list" of information that is confidential on the annual franchise tax report. However, if the member is also noted as a manager or other officer, or the

organization does not have a registered agent, then the confidentiality provisions of this Act shall not apply.

Act 1008 of 2007 — HB2693 — Bond — Trademark Notice — Effective Date: 90 days after adjournment

This Act requires the secretary of state to utilize the following language to explain the limitations of the statute: "...does not necessarily give you the right to use your [proposed corporate name; corporate name; assumed or fictitious name] in this state if the use violates someone else's trade name, trademark, or service mark rights under the trademark laws of the United States, this state, or the common law. Prior to your use of the name, you are encouraged to research the names and marks of other parties used or registered in this state, or registered in the United States Patent and Trademark Office, or consult an attorney to determine the existence of any conflicting rights."

NOTARY CORNER



The act of notarization is the process by which a person who is commissioned by the appropriate governmental body witnesses a person's signature on a document and attests to its validity by affixing a signature and official seal to the document. Electronic notarization, or eNotarization, is simply the process of notarizing an electronic document by electronic means. This article will discuss eNotarization and its current state in Arkansas.

As more transactions take place electronically, it would only stand to reason many of these transactions involve notarized documents. It therefore follows that there should be a need for electronic notaries public. Although many businesses are using and considering the use of electronic documents, it has been the land title industry that is leading the effort in the use of eNotarizations.

Arkansas

Arkansas passed the Uniform Electronic Transaction Act (UETA) in 2001. This law states:

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be

included by other applicable law, is attached to or logically associated with the signature or record.

While UETA provides general law in the area and makes eNotarization legal in Arkansas, some states are now passing specific eNotary legislation that offer specific details on how electronic notaries will operate in their respective states. Currently Arkansas relies only on UETA and has no specific law commissioning eNotaries.

Solutions

There are several solutions to provide eNotarization; they range from very complex secure technology systems to the relatively simple use of document authentication numbers. The more complex methods may make use of encryption or biometrics. Notary information can be encrypted in a document by using Public Key Infrastructure (PKI) or other methods. An electronic notarization may also be secured by the use of biometric identification. The use of biometrics to identify persons includes using fingerprints, retina scans or voice identification. While these methods used to create an eNotary seal are very secure, they can be quite expensive to implement and often rely heavily on proprietary software.

The use of a document authentication number (DAN) has been implemented by several states to provide a relatively simple and inexpensive solution to commission eNotaries. The DAN system described here is based on a system pioneered

by the state of Colorado. In almost every case, a person must first be commissioned as a notary, and then if they wish they can take the additional steps to become an eNotary. The process involves the notary being issued a set of numbers by the secretary of state. The first number or public number is an identification or registration number unique to the notary. Next, the notary is assigned a set of randomly generated numbers that are kept confidential by the notary until they are used. These private numbers will also be kept by the secretary of state and will be associated with the notary's "official seal" information.

By affixing both of these numbers to a document the eNotary creates a unique "seal" that can be "affixed" to the electronic document. If a third party wishes to verify the notarization, he or she may contact the secretary of state and validate that the numbers used on the document in question are associated with that specific notary.

As the business and legal communities demand guidance concerning eNotarization, states will have to decide and then implement a solution appropriate for their jurisdiction.

For more information about eNotarization, contact the Secretary of State's office at 501-682-3409 or 888-233-0325.

(Information for this article was taken from various National Notary Association publications.)

BCS offering new technology options for round-the-clock service

The Arkansas Secretary of State Business & Commercial Services Division is gearing up for an exciting year of new, web-based enhancements for online users. These options will be released throughout the coming year.

For the rest of 2007, BCS is in the process of expanding web-based interactions to provide clients the ability to purchase online certified and/or regular copies, certifications and apostilles on the current Secretary

of State, delayed effective date for corporate filings filed the last 90 days of each year, and dissolutions and withdrawals.

(See **ONLINE** on page 4)

BCS welcomes opportunity to work with new Mexican consulate

The Secretary of State's office and Business and Commercial Services Division look forward to working with the new Mexican Consulate, which opened April 25 in Little Rock.



Arkansas Secretary of State Charlie Daniels meets with Mexican Consul Andres Chao.

The consulate will serve Arkansas, as well as serving as a central hub for the growing Hispanic communities in Oklahoma City, Tulsa and Memphis.

As immigration increases, the number of Hispanic-owned businesses in Arkansas has increased.

BCS will work with the consulate to help Mexican business owners meet the various requirements for operating a business in the state of Arkansas.

"We're happy to have this opportunity to improve service to and communication with the Mexican-owned businesses in Arkansas," Secretary of State Charlie Daniels said. "We anticipate a good working relationship with the consulate, and welcome the staff to our great state. We consider this a wonderful chance to grow an even stronger and more diverse business community in Arkansas."

ONLINE, continued from page 3

As mentioned in an earlier edition of Arkansas, Inc., BCS introduced a new Batch Franchise Tax filing system that gives multiple users the ability to file their clients' franchise tax forms and the entity the ability to pay the fees. Changes were made to the online tax filing system, allowing users to leave

blanks on vacant officer positions instead of inserting "N/A" or "Vacant." Credit cards may now be used in house as well as online.

Our office strives to take client feedback and adapt those comments to useful products for Arkansas entities. Our goal is to provide the people of Arkansas with immediate, accurate information 24 hours a day.



1401 West Capitol, Suite 250
Little Rock, AR 72201-1094
www.sos.arkansas.gov
(501) 682-3409

6.2007

**Presort Standard
U.S. Postage
PAID
Little Rock, AR 72201
Permit No. 2855**

If you wish to receive future issues of *Arkansas, Inc.* electronically, send an e-mail to arsos@sos.arkansas.gov. Please use the subject line "Subscribe BCS" and provide a contact name and number for your business.

IN THE CIRCUIT COURT OF PULASKI
COUNTY, ARKANSAS

TWELFTH DIVISION

**T&T CHEMICAL, INC., ON BEHALF OF ITSELF
AND ALL OTHER SIMILARLY SITUATED
TAXPAYERS**

PLAINTIFF

v. No. OT 99-6191

**CHARLIE DANIELS, Secretary of State for the
State of Arkansas; and MARTHA SHOFFNER,
Treasurer of the State of Arkansas***
DEFENDANTS

NOTICE OF RIGHTS OF CLASS MEMBERS,
PROPOSED CLASS SETTLEMENT, AND
FAIRNESS HEARING TO CONSIDER PROPOSED
SETTLEMENT

**TO: ALL CORPORATIONS WHO PAID
ARKANSAS CORPORATE FRANCHISE TAXES
FROM JULY 1, 1993, THROUGH AUGUST 26,
2002.**

Pursuant to an Order dated April 23, 2007, the Pulaski County Circuit Court, Twelfth Division, the Honorable Alice S. Gray presiding, in the case of *T & T Chemical, Inc., v. Charlie Daniels, et al.*, No. OT 99-6191, has directed the giving of notice as follows:

1. Claims asserted and rulings made in this class action: Act 50 of the 1993 regular session of the Arkansas General Assembly (hereinafter "Act 50") took effect on July 1, 1993. The State of Arkansas, pursuant to its interpretation of Act 50, increased the corporate franchise tax by \$6.00 and collected that additional amount from corporate taxpayers from July 1, 1993, through August 26, 2002. The Complaint in this Action was filed on November 30, 1999, under Article 16, § 13 of the Arkansas Constitution. The Complaint alleges that Act 50 did not authorize the \$6.00 increase of Arkansas' corporate franchise tax and that the collection of that additional amount was illegal. The Circuit Court has ruled that Act 50 did not increase the corporate franchise tax, that the collection of the \$6.00 increase was illegal, but that Arkansas law deems payments made before this Action was filed on November 30, 1999, to be voluntary and thus unrecoverable by corporate taxpayers who paid the \$6.00 increase before that date. As a result, corporations that paid the \$6.00 increase in the Arkansas corporate franchise tax from July 1, 1993, through November 29, 1999, are not entitled to relief under this lawsuit, but those corporations who paid the corporate franchise tax from November 30, 1999, through August 26, 2002, may be entitled to relief under the proposed settlement. The terms of the proposed settlement are discussed below in paragraph 4.

2. Definition of plaintiff class: The plaintiff class is comprised of corporate taxpayers who paid the abovementioned \$6.00 increase in the Arkansas corporate franchise tax from July 1, 1993, through August 26, 2002.

3. Fairness hearing concerning proposed settlement agreement: A fairness hearing has been scheduled for August 30, 2007, at 3:00 p.m. at the Pulaski County Circuit Court, Twelfth Division, Room 350, Pulaski County Courthouse, 401 West Markham Street, Little Rock, Arkansas, 72201, for the purpose of determining whether the proposed settlement agreement is fair to the plaintiff class. The proposed settlement is a compromise settlement of doubtful and disputed claims and the Defendants deny any liability.

4. Terms of the proposed settlement agreement: Under the terms of the proposed settlement agreement, with the exception of the members of the plaintiff class who have given notice that they voluntarily paid the abovementioned \$6.00 increase in the corporate franchise tax, each member of the plaintiff class who is in good standing as of February 1, 2008, shall receive a credit to be applied against the amount owed by the member for corporate franchise taxes due for tax year 2007 in the amount of the total that the State collected from the member pursuant to the abovementioned \$6.00 increase in the corporate franchise tax after November 30, 1999, less credits for such collections previously issued to the member and less reasonable attorneys' fees and costs as awarded by the Pulaski County Circuit Court. No action need be taken to obtain such credits by members of the plaintiff class who are in good standing and paying Arkansas' corporate franchise taxes as of February 1, 2008. The credits for such class members shall be automatically issued and reflected on the corporate franchise tax reports to be mailed to such class members no later than February 1, 2008.

Further, with the exception of the members of the plaintiff class who have given notice that they voluntarily paid the abovementioned \$6.00 increase in the corporate franchise tax, each member of the plaintiff class who is not in good standing as of February 1, 2008, may apply for a credit to be applied against the amount owed by the member for corporate franchise taxes due for tax year 2007 in the amount of the total that the State collected from the member pursuant to the abovementioned \$6.00 increase in the corporate franchise tax after November 30, 1999, less credits for such collections previously issued to the member and less reasonable attorneys' fees and costs as awarded by the Pulaski County Circuit Court. However, such members will be required to execute a refund claim form, copies of which will be provided by the Secretary of

State to the member upon request. The Secretary of State retains the right to offset any credits for members owing past due corporate franchise taxes.

5. Attorneys' fees and costs: The proposed settlement agreement provides that the amount of attorneys' fees and costs will be submitted to the Circuit Court at the fairness hearing. It is presently anticipated that the attorneys for the plaintiff class will request 40% of the monies available to be credited for corporate franchise taxes paid pursuant to Act 50 after November 30, 1999, as their fees and for reimbursement of costs advanced during their prosecution of this action. If this request is granted, then a corporate taxpayer who paid an additional \$6.00 of corporate franchise taxes as a result of the State's interpretation of Act 50 would receive a credit of \$3.60, which is 60% of the additional \$6.00.

6. Rights of class members: You are hereby advised that any judgment or settlement of this matter will include all members of the plaintiff class as defined above in paragraph 2. Any member who desires may participate in the fairness hearing themselves or through counsel. In addition, any member who desires may themselves, or through counsel, either declare that they voluntarily paid the abovementioned \$6.00 increase in the corporate franchise tax or object to the proposed settlement by filing such declaration or objection with the Pulaski Circuit Clerk, Pulaski County Courthouse, 401 West Markham Street, Little Rock, Arkansas, 72201, on or before August 16, 2007. Your declaration or objection must be in writing and contain the caption and case number for this action, your full corporate name, mailing address, and Federal Tax Identification Number. Copies of such declarations and objections must also be sent by United States Mail to Steven A. Owings, lead counsel for the plaintiff class, at Owings Law Firm, 1320 D Brookwood Drive, Little Rock, AR 72202, and to C. Joseph Cordi, Jr., Assistant Attorney General, 323 Center Street, Suite 200, Little Rock, AR 72201, no later than August 16, 2007. If you should have any questions concerning the proposed settlement agreement or the fairness hearing, please write Mr. Owings or call him at (501) 661-9999.

**PLEASE DO NOT CALL OR WRITE THE
COURT OR THE OFFICE OF THE CLERK OF THE
COURT FOR INFORMATION OR ADVICE.**

**The Honorable Charlie Daniels is Arkansas' Secretary of State, and the Honorable Martha Shoffner is Arkansas' Treasurer. They are automatically substituted as the Defendants in this action by operation of Arkansas Rule of Civil Procedure 25(d).*